

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

STEVEN E. HAMMER,)	
individually and on behalf of all others)	
similarly situated,)	
)	Case No. 08-CV-W-339-FJG
Plaintiff,)	
)	CLASS ACTION
v.)	
)	
JP'S SOUTHWESTERN FOODS, L.L.C.)	
d/b/a JOSE PEPPER'S BORDER)	
GRILL & CANTINA; and DOES)	
1 through 10, inclusive,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S TRIAL BRIEF

COMES NOW, Plaintiff Steven E. Hammer ("Plaintiff"), as Class Representative, by and through his undersigned counsel, and respectfully submits his Motion to Strike Defendant's Trial Brief. In support of his Motion, Plaintiff states as follows:

1. On July 27, 2010, Defendant filed its *JP's Trial Brief*.
2. Defendant's Trial Brief, however, is nothing more than a reassertion and restatement of Defendant's arguments that it made in its summary judgment briefing.
3. Defendant should not be permitted to essentially reargue the merits of its motion for summary judgment under the guise of a trial brief.
4. Accordingly, the Court should strike Defendant's Trial Brief.
5. To the extent that the Court deems Defendant's Trial Brief and the contents thereof appropriate for a trial brief, Plaintiffs respectfully refer the Court to its *Plaintiff's Suggestions in Opposition to Defendant's Motion for Summary Judgment* (Doc. No. 106) for its response to Defendant's "Trial Brief."

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests this Court enter an Order striking Defendant's Trial Brief.

Dated: August 3, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2010, the foregoing document was electronically filed with the Clerk of the Court by using the CM/ECF system which will send a notice of such filing to the following:

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I further certify that on August 3, 2010, the foregoing document was mailed via United States Postal Service to the following non CM/ECF participants:

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